Supreme Court, U.S.
FILED
JUN 17 2005
OFFICE OF THE CLERK

No. 04-1717

In The

Supreme Court of the United States

In re
YORIE VON KAHL,

Petitioner.

PETITION FOR A WRIT OF MANDAMUS TO DISTRICT JUDGE RALPH ERICKSON

YORIE VON KAHL, Petitioner
By His Attorneys,
CARL NADLER, ESQUIRE
HELLER, EHRMAN, WHITE & MCAULIFFE
1666 K Street, Suite 300
Washington, DC 20006
(202) 912-2575

Of Counsel:
BARRY A. BACHRACH, ESQUIRE
BOWDITCH & DEWEY, LLP
311 Main Street
P.O. Box 15156
Worcester, MA 01615-0156
(508) 926-3403

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

I. WHETHER THIS COURT MUST ISSUE A WRIT OF MANDAMUS WHERE A FEDERAL COURT LACKED AUTHORITY TO SENTENCE PETITIONER UPON OFFENSES FOR WHICH A JURY RETURNED GENERAL VERDICTS OF ACQUITTAL AND FOR WHICH THE JURY ADDITIONALLY RETURNED SPECIAL VERDICTS FOR OFFENSES CLEARLY BEYOND THOSE PERMITTED BY THE CONSTITUTION AND THE RELEVANT STATUTE; BY ITS PLAIN LANGUAGE – AN OFFENSE THAT ALWAYS WAS AND REMAINS AN EXCLUSIVE STATE AND NON-FEDERAL OFFENSE?

II. WHETHER THIS COURT MUST ISSUE A WRIT OF MANDAMUS TO ENFORCE PETITIONER'S RIGHT TO A TRIAL BY JURY WHERE, AS HERE, (1) THE DISTRICT COURT IGNORED GENERAL ACQUITTALS FOR KILLING U.S. MARSHALS WHILE ENGAGED IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES, (2) RELIED UPON A VERDICT FOR AN OFFENSE PUNISHABLE ONLY IN THE SPECIAL MARITIME AND TERRITORIAL JURISDICTION OF THE UNITED STATES BY ADDING ELEMENTS FROM THE ACQUITTED COUNTS AND FROM OUTSIDE THE RECORD TO SUSTAIN JURISDICTION TO IMPOSE A SENTENCE OTHERWISE CLEARLY AND PATENTLY ILLEGAL?

LIST OF PARTIES

The names of all parties appear in the caption of the case. The Petitioner is not a corporation.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
CITATIONS OF OPINIONS AND ORDERS ENTERED BY LOWER COURTS	1
BASIS OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
GROUNDS FOR ISSUANCE OF WRIT	2
STATEMENT OF THE CASE AND PERTINENT FACTS	3
ARGUMENT	8
CONCLUSION	27
ADDENDA	App. 1

TABLE OF AUTHORITIES

Page

CASES

Apprendi v. New Jersey, 530 U.S. 466 (2000) 18, 19

Ball v. United States, 163 U.S. 662 (1896) 12, 19

Basset v. United States, 76 U.S. 38 (1870) 11

Beacon Theaters, Inc. v. Westover, 359 U.S. 500 (1959) 9

Blakely v. Washington, 542 U.S. __, 159 L.Ed. 2d 403 (2004) 8, 13, 24, 26

Bollenbach v. United States, 326 U.S. 607 (1946) 19

Brotherhood of Carpenters v. United States, 330 U.S. 395 (1947) 19

Burk v. United States, 437 U.S. 1 (1978) 12, 19

Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 5 L.Ed. 257 (1821) 16

Cruikshank v. United States, 92 U.S. 542, 23 L.Ed. 588 (1875) 16

De Beers Consolidated Mines v. United States, 325 U.S. 212 (1945) 8, 9

DeBenque v. United States, 85 F.2d 202 (D.C. Cir. 1936) 10

Delaware, Lackawanna & Western Railroad Co. v. Rellstab, 276 U.S. 1 (1928) 9

Dorzynski v. United States, 418 U.S. 424 (1974) 11

Ex parte Fisk, 113 U.S. 713 (1884) 9

Ex parte McCardle, 7 Wall. 506 (1869) 24

Ex parte United States, 242 U.S. 27 (1916) 9

TABLE OF AUTHORITIES – Continued

Page

Fong Foo v. United States, 369 U.S. 141 (1962) 19

Garfield v. United States ex rel. Goldsby, 211 U.S. 249 (1908) 28

Hill v. United States, 368 U.S. 424, 7 L.Ed. 2d 417, 82 S.Ct. 468 (1962) 10

In re Simmons, 247 U.S. 231 (1918) 9

In re Winship, 397 U.S. 358 (1970) 26

Kerchevel v. United States, 274 U.S. 220 (1927) 11

Lewis v. United States, 523 U.S. 155 (1998) ... 14, 15, 16, 26

Logan v. United States, 144 U.S. 263 (1892) 21

Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304 (1816) 12

McCargo v. Chapman, 61 U.S. 555 (1858) 9

Morgan v. United States, 346 U.S. 502, 74 S.Ct. 247 (1954) 10

Patterson v. United States, 15 U.S. (2 Wheat.) 221 (1817) 12

People v. Godfrey, 17 Johns. 225 (1819) 16

Rader v. United States, 288 F.2d 452 (8th Cir. 1961) 11

Sparf v. United States, 156 U.S. 51 (1895) 12

Stantini v. United States, 268 F.Supp.2d 168 (S.D.N.Y. 2003) 26

Statler v. United States, 157 U.S. 277 (1895) 12

Steel Co. v. Citizens For A Better Environment, 523 U.S. 83 (1998) 24

TABLE OF AUTHORITIES – Continued

Page

Sullivan v. Louisiana, 508 U.S. 275, 124 L.Ed. 2d 182 (1993) 13, 20, 27

United States v. Bevans, 16 U.S. (3 Wheat.) 336 (1818), 4 L.Ed. 404 (1818) 14, 26, 26

United States v. Bin Laden, 92 F.Supp.2d 189 (S.D.N.Y. 2000) 15, 16, 26

United States v. Bradford, 194 F.2d 197 (2nd Cir. 1952) 10

United States v. Brunson, 549 F.2d 348 (5th Cir. 1977) 22

United States v. DiFrancesco, 449 U.S. 117 (1980)..... 12, 19

United States v. Finch, 16 F.3d 228 (8th Cir. 1994)..... 19

United States v. Gatlin, 216 F.3d 207 (2nd Cir. 2000) 15

United States v. Gaudin, 515 U.S. 506 (1995)..... 12, 26

United States v. Kaiser, 545 F.2d 467 (former 5th Cir. 1977) 15

United States v. Leight, 818 F.2d 1297 (7th Cir. 1987) 16

United States v. Lopez, 514 U.S. 549 (1995)..... 15, 23

United States v. Mack, 494 F.2d 1204 (9th Cir. 1974) 11

United States v. Maples, 501 F.2d 985 (4th Cir. 1974) 11

United States v. Martin Linen Supply Co., 430 U.S. 564 (1977) 12, 13, 22, 26

United States v. McKinney, 88 F.3d 118 (2nd Cir. 1996) 19

TABLE OF AUTHORITIES – Continued

Page

United States v. Parker, 622 F.2d 298 (8th Cir. 1980) 16

United States v. Peltier, 312 F.3d 938 (8th Cir. 2002)..... 10

United States v. Powell, 487 F.2d 325 (4th Cir. 1973) 19

United States v. Powell, 469 U.S. 57 (1984)..... 11

United States v. Rader, 185 F.Supp. 224 (W.D. Ark. 1960) 10, 11

United States v. Rico, 902 F.2d 1065 (2nd Cir. 1990) 10

United States v. Suppenbach, 1 F.3d 679 (8th Cir. 1993) 19

United States v. Wiltberger, 18 U.S. (5 Wheat.) 76 (1820), 5 L.Ed. 37 (1820) 14, 16, 23, 25

United States v. Young, 248 F.3d 260 (4th Cir. 2001) ... 6, 22

United States Catholic Conference v. Abortion Rights Mobilization, Inc., 487 U.S. 72 (1988)..... 9

United States of America v. Yorie Von Kahl, 2003 U.S. Dist. Lexis 12539..... 1

United States of America v. Yorie Von Kahl, Slip Op. (U.S.N.D. April 26, 2004) 1

United States of America v. Yorie Von Kahl, No. 03-3009 (8th Cir. 2004)..... 1

United States of America v. Yorie Von Kahl, No. 04-850 (United States Supreme Court, January 24, 2005) 1, 8

Will v. United States, 389 U.S. 90 (1967)..... 8, 9

Yates v. United States, 354 U.S. 298 (1957)..... 25

TABLE OF AUTHORITIES – Continued

Page

RULES AND STATUTES

18 U.S.C. § 2 4

18 U.S.C. § 7 ..... 14, 15, 16, 17, 23

18 U.S.C § 924(j) 22

18 U.S.C. § 1111 ..... *passim*

18 U.S.C. § 1112 ..... 22, 23

18 U.S.C. § 1114 ..... *passim*

18 U.S.C. § 4161 4

18 U.S.C. § 4162 4

18 U.S.C. § 4206 4

28 U.S.C. § 1651(a) 1

28 U.S.C. § 2106 1

Revised Statute § 5339 15

Fed.R.Crim.P. 32(b) (1983) ..... *passim*

Article III, Section 2, U.S. Constitution 12, 24

Congress by the Act of April 30, 1790, 1st Sess. II, ch. 9, 1 Stat. 112 15

Act of January 15, 1897, ch. 29, 29 Stat. 487 15

U.S. Department of Justice, Criminal Division, Letter to Ms. Donna R. Evans, Nov. 25, 2003 5

CITATIONS OF OPINIONS AND ORDERS ENTERED BY LOWER COURTS

United States of America v. Yorie Von Kahl, 2003 U.S. Dist. Lexis 12539

United States of America v. Yorie Von Kahl, Slip Op. (U.S.N.D. April 26, 2004)

United States of America v. Yorie Von Kahl, No. 03-3009 (8th Cir. 2004), order denying rehearing and order for rehearing en banc

United States of America v. Yorie Von Kahl, No. 04-850 (United States Supreme Court, January 24, 2005), *cert. denied*

BASIS OF JURISDICTION

This Court has jurisdiction to correct the District Court's fabrication of a verdict without which the Court had no federal jurisdiction and to compel the Court to comply with its prescribed authority as detailed herein and mandated on the face of the record. 28 U.S.C. §§ 1651(a) and 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the unconstitutional application of 18 U.S.C. §§ 1111 and 1114 in violation of the plain statutory language and the Sixth Amendment of the United States Constitution. Ultimately, the case involves the District Court's sentencing Petitioner to crimes which do

not exist and over which the trial court had no jurisdiction.

GROUNDS FOR ISSUANCE OF WRIT

This petition seeks an order compelling Ralph R. Erickson, District Judge, United States District Court for the District of North Dakota, Southeastern Division, to enforce Petitioner's constitutional rights and vacate the illegal sentences it imposed by (1) enforcing the general verdicts of acquittal returned by the jury, as mandated by Fed.R.Crim.P. 32(b) (1983); and (2) by quashing the verdicts erroneously created by the sentencing judge, declaring them void for usurpation of judicial power.

The sentencing court illegally sentenced Petitioner to four offenses that always were and remain exclusive state and non-federal offenses. To support its sentencing, the trial court erroneously merged elements from general acquittals with elements of special guilty verdicts to sentence Petitioner to life upon an offense over which the federal court had no jurisdiction. By its actions, the trial court ignored the jury's general acquittals for killing United States marshals while engaged in the performance of their official duties and erroneously relied upon a verdict for an offense punishable only in the special maritime and territorial jurisdiction of the United States by adding elements from the acquitted counts and from outside the record for the purpose of sustaining jurisdiction to impose and sustain a sentence otherwise patently illegal.

On a motion to correct the illegal sentences the trial court refused to honor the jury's verdicts, refused to carry

out its ministerial duties mandated by Fed.R.Crim.P. 32(b) (1983), and denied Petitioner his trial by jury, causing Petitioner continuing irreparable harm of which all such acts are *ultra vires*, *coram non judice* and *void ab initio*. (*See* Addendum A) Petitioner has no other remedy to correct the illegal sentences or to enforce the mandates of Fed.R.Crim.P. 32(b) to correct the trial court's illegal sentencing Petitioner to a crime which it created and over which the federal courts have no jurisdiction.

STATEMENT OF THE CASE AND PERTINENT FACTS

This case involves the most extraordinary matter of a federal judge overriding general verdicts of acquittal, engrafting elements from acquitted offenses onto special verdicts thereby illegally creating verdicts never returned by a jury and otherwise non-existent federal offense and jurisdiction.

Petitioner was indicted by a federal grand jury empanelled in the District of North Dakota on March 11, 1983, in an eleven count indictment charging him, in Counts 1 and 2, with the first degree murder of Kenneth M. [sic] Muir in violation of 18 U.S.C. § 1111 and for killing Muir as a U.S. Marshal who was engaged in the performance of his official duties in violation of 18 U.S.C. § 1114 (Count 1), and with the first degree murder of Robert S. Cheshire, Jr. in violation of 18 U.S.C. § 1111 and for killing Cheshire as a deputy U.S. Marshall who was engaged in the performance of his official duties in violation of 18